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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,596	12/02/2005	Randolf Von Oepen	17601.28a.1.1	1304
57360 7590 12/09/2009 WORKMAN NYDEGGER 1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111				
EXAMINER				
HORNBERGER, JENNIFER LEA				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
12/09/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/523,596

**Applicant(s)**

VON OEPEN ET AL.

**Examiner**

JENNIFER L. HORNBERGER

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-21 and 23 is/are allowed.
- 6) ☒ Claim(s) 12-15 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/01/2009 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 12-15 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Euteneuer et al. (US 5,445,646).

Regarding claim 12, Euteneuer et al. disclose an apparatus for delivery and deployment of a stent within a vessel, the stent being expandable from a delivery diameter to a deployed diameter, the apparatus comprising: a catheter (12) having a proximal end and a distal end; an expandable means (110) mounted at the distal end of the catheter and being expandable by means of a fluid pressure device, the expandable means being expandable from a delivery diameter to a deployment diameter; a sheath (14) configured to be advanced over the expandable means and being arranged for proximal retraction from over the expandable means by means of a retraction device, the fluid pressure device is further arranged to operate the retraction device so that the expandable means is expanded in response to the retraction of the

sheath. There is inherently a fluid pressure device for providing the fluid to expand the expandable means and to operate the retraction device (col. 9, ln. 18-32 and ln. 48-51; Fig. 12)

Regarding claim 13, Euteneuer et al. disclose wherein the retraction device comprises a cylinder-piston arrangement operated by the fluid pressure (col. 9, ln.18-32; Fig. 12).

Regarding claim 14, Euteneuer et al. disclose a control means for controlling the fluid pressure operating the retraction device and the expandable means, either concurrently or sequentially. There is inherently a control means for controlling the fluid pressure for operating the retraction device and the expandable means. Expansion of the expandable means occurs sequentially to the retraction of the sheath since the balloon is used to seat the stent into the vessel wall (col. 9, ln. 48-51).

Regarding claim 15, Euteneuer et al. disclose a first piston of the cylinder-piston arrangement is connected to the sheath via a wire (98, 100) (col. 9, ln. 18-32; Fig. 12).

4. Regarding claim 22, Euteneuer disclose the fluid is liquid (col. 9, ln.18-32).

#### ***Allowable Subject Matter***

5. Claims 16-21 and 23 are allowed.

#### ***Response to Arguments***

6. Applicant's arguments filed 10/01/2009 have been fully considered but they are not persuasive. Applicants argue that Euteneuer et al. fail to disclose the expandable means is expanded in response to retraction of the sheath. The examiner respectfully disagrees. The expandable means is expanded "in response" to retraction of the sheath because the expandable means is expanded after retraction of the sheath.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER L. HORNBERGER whose telephone number is (571)270-

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3642. The examiner can normally be reached on Monday through Friday from 8am-5pm, Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571)272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlh  
12/02/2009

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734